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SUBJECT: AMCHAM VOICES CONCERN OVER DRAFT LEGISLATION FOR WTO  
ACCESSION

REF: HANOI 1957

[1](#)1. (SBU) SUMMARY: At a meeting of the Legal Committee of the HCMC American Chamber of Commerce, members voiced concern regarding legislation being drafted in preparation for Vietnam's WTO accession. While new overarching laws may meet WTO obligations, AmCham legal experts say the devil is in the details. Fred Burke, managing partner of Baker and Mackenzie law firm, claimed that draft implementing decrees are laden with lists that limit rights to certain sectors, requirements for "baby" permits and registrations, and language that could be interpreted in a way that disadvantages foreign business. At the same time, he said, trading and distribution rights continue to be a worry, both in draft legislation and as part of BTA implementation. END SUMMARY.

[1](#)2. (SBU) Approximately 20-30 representatives of U.S. companies and law firms, the legal committee of the Ho Chi Minh City branch of the American Chamber of Commerce, gathered on August 9 to discuss draft legislation being prepared by the GVN for Vietnam's accession to the World Trade Organization (WTO). Fred Burke, managing partner of Baker & McKenzie law firm in Vietnam, led the discussion. He reported that, in his view, red-tape, corruption and protectionism on the part of the GVN is growing, and this is manifested primarily in decrees being drafted to supplement laws being passed by Vietnam's National Assembly, including the Commercial Law, the Common Investment Law and the Unified Enterprise Law.

[1](#)3. (SBU) According to Burke, provisions in draft decrees on franchising, commercial promotions, foreign traders, multi-level marketing, and others represent an attempt by GVN ministries, particularly the Ministry of Trade (MOT), to retain power and potential sources of graft by requiring what Burke termed "baby" permits (e.g., repetitive permits for the same activity). He alleged that while the GVN is submitting "sanitized" laws for WTO review, ministries are formulating implementing decrees that include lists that limit the number of categories in which foreign traders can participate and include burdensome registration/documentary requirements. (Note: The decrees to which Burke referred were not yet available publicly at the time of the meeting. They have since been posted, in Vietnamese, on the Ministry of Trade's website. End note.)

[1](#)4. (SBU) Dao Nguyen, partner at Johnson, Stokes & Master law firm in Vietnam, echoed Burke's sentiments. GVN ministries are engaged in territorial in-fighting through draft decrees, she asserted. "The Prime Minister needs to put his foot down." She believes that while piling registration requirements into the decrees, more fundamental problems are being ignored. For example, there is potential uncertainty between the investment and commercial laws on the issue of distribution. According to Nguyen, the draft investment law notes that distribution will be subject to rules articulated by the Prime Minister's office, while the commercial law does not include distribution at all, only mentioning sales-purchase agreements and agents. Nguyen's GVN contacts tell her currently no one is working on distribution rules as part of the investment law. All of this leaves a major issue in a legal and bureaucratic gray area. The GVN needs to do a better job at considering new laws and regulations in relation to each other, Nguyen said.

[1](#)5. (SBU) Trading and distribution rights were a major focus of the AmCham discussion. Legal experts and company representatives sitting around the table expressed strong dissatisfaction both with Vietnam's record on implementing its trading and distribution obligations under the Bilateral Trade Agreement (BTA) and with overall restrictions on trading and distribution. Walter Blocker, managing director of Gannon Vietnam Limited, reported that Vietnam's recent attempt to meet BTA trading/distribution obligations by providing a point-of-contact in a diplomatic note (reftel) was thus far unsuccessful, as Blocker could not reach the individual through the contact details provided. (Note: Econoff also called the number and got no answer. Embassy Hanoi is following up with the Ministry of Trade to seek to correct this problem. End Note.)

16. (SBU) Other company representatives voiced their concerns more generally on limits on trading and distribution rights. Mark Gillin, managing director of AIM, a logistics and marketing company based in Vietnam, said Vietnam's current rules regarding trading and distribution rights result in higher costs and greater inefficiency for foreign companies seeking to get their products into Vietnam. Burke believed that limits on trading and distribution rights were among the major reasons many companies decided not to enter Vietnam's market. He said that almost all the companies that come to him to inquire about doing business in Vietnam express disappointment upon learning that they cannot sell directly into the Vietnamese market, but must go through a Vietnamese intermediary. All the meeting participants agreed that phase-ins for trading and distribution rights provided in Annex G of the BTA were too slow.

17. (SBU) COMMENT: The meeting concluded with a decision to update AmCham's WTO position paper, incorporating these and other concerns. EconOff and Post Commercial Officer urged companies to report to the USG on BTA implementation problems and WTO priorities. U.S. business here clearly realizes that time is growing short to speak up on these issues.

18. (SBU) On August 16, in Hanoi Fred Burke spoke at a luncheon meeting of the Hanoi AmCham. The attendees included not only U.S. business representatives, but also members of the press and representatives of other embassies. Burke focused on Vietnam's efforts to join the WTO and on implementation of the Bilateral Trade Agreement (BTA), but he also made some of the same complaints about restrictive regulations on trading and distribution rights that he had made previously in Ho Chi Minh City. He urged U.S. businesses to provide him with their views so that he could update the AmCham's position paper on Vietnam's WTO accession.

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